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Attorney for Plaintiff, Samantha Regina Averill-Marcogliese

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

Samantha Regina Averill-
Marcogliese,

Plaintiff,

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Kilolo Kijakazi, Acting
Commissioner of Social Security.

Defendant.

Case No. 1:21-cv-00277-SKO (SS)

**STIPULATION FOR THE AWARD
AND PAYMENT OF ATTORNEY
FEES AND EXPENSES PURSUANT
TO THE EQUAL ACCESS TO
JUSTICE ACT; ORDER RE:
STIPULATION AND DENYING
MOTION FOR ATTORNEY'S FEES
AS MOOT**

(Docs. 19 & 21)

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of FIVE THOUSAND ONE HUNDRED DOLLARS AND 00/100 (\$5,100.00) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of FOUR HUNDRED AND TWO AND 00/100 dollars (\$402.00) under 28 U.S.C. §1920. This amount represents compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C. §§ 1920, 2412(d).

1 After the Court issues an order for EAJA fees to Plaintiff, the government will
2 consider the matter of Plaintiff's assignment of EAJA fees to counsel. Pursuant to
3 *Astrue v. Ratliff*, 560 U.S. 586, 598, 130 S.Ct. 2521, 177 L.Ed.2d 91 (2010), the ability
4 to honor the assignment will depend on whether the fees are subject to any offset
5 allowed under the United States Department of the Treasury's Offset Program. After
6 the order for EAJA fees is entered, the government will determine whether they are
7 subject to any offset.

8 Fees shall be made payable to Plaintiff, but if the Department of the Treasury
9 determines that Plaintiff does not owe a federal debt, then the government shall cause
10 the payment of fees, expenses and costs to be made directly to Counsel, pursuant to
11 the assignment executed by Plaintiff. Any payments made shall be delivered and
12 made payable to Plaintiff's counsel, Jonathan O. Peña.

13 This stipulation constitutes a compromise settlement of Plaintiff's request for
14 EAJA attorney fees, and does not constitute an admission of liability on the part of
15 Defendant under the EAJA or otherwise. Payment of the agreed amount shall
16 constitute a complete release from, and bar to, any and all claims that Plaintiff and/or
17 Counsel including Counsel's firm may have relating to EAJA attorney fees in
18 connection with this action.

19 This award is without prejudice to the rights of Counsel and/or Counsel's firm
20 to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the
21 savings clause provisions of the EAJA.

22 The Parties request that Plaintiff's Motion for Attorney Fees (Doc. No. 19) be
23 withdrawn.

1 Respectfully submitted,

2 Dated: September 21, 2023

3 /s/ Jonathan O. Peña

4 JONATHAN O. PEÑA

5 Attorney for Plaintiff

6 Dated: September 21, 2023

7 PHILLIP A. TALBERT

8 United States Attorney

9 MATHEW W. PILE

Associate General Counsel

Office of Program Litigation

Social Security Administration

10 By: * Caspar I. Chan

11 Caspar I. Chan

12 Special Assistant U.S. Attorney

13 Attorneys for Defendant

14 (*Permission to use electronic signature
obtained via email on September 21, 2023).

15 **ORDER**

16 Based upon the parties' foregoing Stipulation for the Award and Payment of Equal Access to
17 Justice Act Fees and Expenses (the "Stipulation") (Doc. 21)

18 **IT IS ORDERED** that fees and expenses in the amount of FIVE THOUSAND ONE
19 HUNDRED DOLLARS AND 00/100 (\$5,100.00) as authorized by the Equal Access to Justice Act
20 (EAJA), 28 U.S.C. § 2412(d) and costs in the amount of FOUR HUNDRED AND TWO AND 00/100
21 dollars (\$402.00) under 28 U.S.C. §1920, be awarded subject to the terms of the Stipulation.

22 **IT IS FURTHER ORDERED** that Plaintiff's motion for attorney's fees (Doc. 19) is DENIED
23 as MOOT.

24 IT IS SO ORDERED.

25 Dated: September 21, 2023

26 /s/ Sheila K. Oberto

1 UNITED STATES MAGISTRATE JUDGE
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